

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHAEL J. BYRD
14858 Gypsy Hill Road
Saratoga, CA 95070
Certified Public Accountant Certificate No.
CPA 46019

Respondent.

Case No. AC-2011-23

OAH No. 2012010054

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 1, 2012.

It is so ORDERED August 2, 2012.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
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Attorneys for Complainant

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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2011-23

11 **MICHAEL J. BYRD**
12 **14858 Gypsy Hill Road**
Saratoga, CA 95070
13 **Certified Public Accountant Certificate No.**
CPA 46019

OAH No. 2012010054

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Respondent.
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16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
21 Accountancy. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Justin R. Surber,
23 Deputy Attorney General.

24 2. Michael J. Byrd (Respondent) is represented in this proceeding by attorney August
25 Gugelmann, whose address is

26 August Gugelmann
27 Swanson & McNamara LLP
300 Montgomery St #1100
28 San Francisco, CA 94104.

3. On or about October 10, 1986, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 46019 to Michael J. Byrd (Respondent). The Certified Public Accountant Certificate expired on June 30, 2008, and has not been renewed.

JURISDICTION

4. Accusation No. AC-2011-23 was filed before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 12, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2011-23 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2011-23. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. AC-2011-23, if proven at a hearing, constitute cause for imposing discipline upon his Certified Public Accountant Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the CBA to issue an order accepting the surrender of his Certified Public Accountant Certificate without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the CBA regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 46019, issued to Respondent Michael J. Byrd, is surrendered and accepted by the California Board of Accountancy.

1. The surrender of Respondent's Certified Public Accountant Certificate and the acceptance of the surrendered license by the CBA shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the California Board of Accountancy.

2. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the CBA's Decision and Order.

3. Respondent shall cause to be delivered to the CBA his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the CBA shall treat it as a petition for reinstatement of a revoked license. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. AC-2011-23 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$7,290.20 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, August Gugelmann. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

1
2 DATED:

5/18/12 Michael J. Byrd

3 MICHAEL J. BYRD
Respondent

4 I have read and fully discussed with Respondent Michael J. Byrd the terms and conditions
5 and other matters contained in this Stipulated Surrender of License and Order. I approve its form
6 and content.

7 DATED:

8 AUGUST GUGELMANN
Attorney for Respondent

9
10 ENDORSEMENT

11 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
12 for consideration by the California Board of Accountancy of the Department of Consumer
13 Affairs.

14 Dated:

Respectfully submitted,

15 KAMALA D. HARRIS
16 Attorney General of California
17 FRANK H. PACOE
Supervising Deputy Attorney General

18
19 JUSTIN R. SURBER
20 Deputy Attorney General
Attorneys for Complainant

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22 SF2011201586
23 Stipulation.rtf
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1
2 DATED: _____

3 MICHAEL J. BYRD

4 Respondent

5 I have read and fully discussed with Respondent Michael J. Byrd the terms and conditions
6 and other matters contained in this Stipulated Surrender of License and Order. I approve its form
7 and content.

8 DATED: 5/23/12

9 
AUGUST GUGELMANN

Attorney for Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
12 for consideration by the California Board of Accountancy of the Department of Consumer
13 Affairs.

14 Dated: 6/4/12

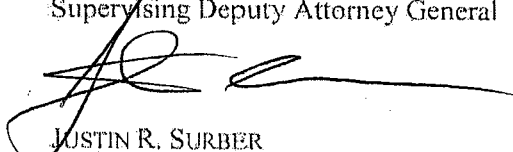
Respectfully submitted,

15 KAMALA D. HARRIS

16 Attorney General of California

FRANK H. PACOE

17 Supervising Deputy Attorney General

18 
JUSTIN R. SURBER

19 Deputy Attorney General

20 *Attorneys for Complainant*

21
22 SF2011201586

23 Stipulation.rtf

Exhibit A

Accusation No. AC-2011-23

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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Deputy Attorney General
4 State Bar No. 226937
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11 **MICHAEL J. BYRD**
12 14858 Gypsy Hill Road
Saratoga, CA 95070
13 **Certified Public Accountant Certificate**
No. CPA 46019

ACCUSATION

14 Respondent.

15
16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
21 2. On or about October 10, 1986, the California Board of Accountancy issued Certified
22 Public Accountant Certificate Number CPA 46019 to Michael J. Byrd (Respondent). The
23 Certified Public Accountant Certificate expired on June 30, 2008, and has not been renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the California Board of Accountancy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.

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4. Section 5100 states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

"(h) Suspension or revocation of the right to practice before any governmental body or agency.

"(1) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation."

5. Section 5063 states:

"(a) A licensee shall report to the board in writing of the occurrence of any of the following events . . . within 30 days of the date the licensee has knowledge of these events:

"(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency."

“(c) A licensee shall report to the board in writing, within 30 days of the entry of the judgment, any judgment entered on or after January 1, 2003, against the licensee in any civil action alleging any of the following:

(1) Dishonesty, fraud, gross negligence, or negligence.

(2) Breach of fiduciary responsibility.

1 (3) Preparation, publication, or dissemination of false, fraudulent, or materially misleading
2 financial statements, reports, or information.

3 (4) Embezzlement, theft, misappropriation of funds or property, or obtaining money,
4 property, or other valuable consideration by fraudulent means or false pretenses, or other errors or
5 omissions.

6 (5) Any actionable conduct by the licensee in the practice of public accountancy, the
7 performance of bookkeeping operations, or other professional practice.”

8 COSTS

9 6. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
14 The board shall not recover costs incurred at the administrative hearing."

15 FACTUAL BACKGROUND

16 7. Respondent's license is subject to discipline based upon two separate actions by the
17 Securities and Exchange Commission ("SEC") and Respondent's failure to report those actions to
18 the Board.

19 SEC CIVIL CASE

20 8. The first SEC action involved a civil suit filed on about August 17, 2007 in the U.S.
21 District Court for the Northern District of California, entitled *Securities and Exchange*
22 *Commission v. Michael J. Byrd*, Civil Action No. C-07-4223 ("Civil Action"). The complaint in
23 the Civil Action alleged that during his tenure as Chief Financial Officer (CFO) and Chief
24 Operating Officer (COO) of Brocade Communications Systems, Inc. ("Brocade"), Respondent
25 received information calling into question the integrity of Brocade's financial statements based on
26 its options granting process carried out by Brocade's then chief executive officer. Respondent
27 allegedly received information suggesting that Brocade's then chief executive officer was
28 backdating options grants to executives and others so that the grantees would receive in-the-

1 money options that appeared to be granted at-the-money.¹ The complaint further alleged that
2 Respondent was personally involved in falsifying records so that in-the-money options appeared
3 to be granted at-the-money. Respondent himself was granted backdated options.

4 9. The complaint alleges Brocade issued materially false financial statements included
5 in its annual and quarterly reports filed on Forms 10-K and 10-Q with the Securities and
6 Exchange Commission during the company's fiscal years 2001 through 2003. Respondent as
7 CFO and COO reviewed these statements and made representations that the reports were
8 accurate. Respondent also reviewed and signed materially misleading statements.

9 10. The Complaint in the Civil Action, alleged Respondent was involved in: fraud;
10 dishonesty; making false and misleading representations; falsifying or causing to be falsified,
11 books, records or accounts; providing substantial assistance to the filing of false and misleading
12 reports.

13 11. On or about January 2, 2010, a final judgment was entered against Respondent. The
14 judgment enjoined Respondent from violating several sections of the Securities Act of 1933 and
15 the Securities Exchange Act of 1934. The judgment found Respondent liable for disgorgement
16 plus interest in the amount of \$249,843. The judgment also ordered Respondent to pay a civil
17 penalty of \$175,000 pursuant to Section 20(d) of the Securities Act of 1933 and Section 21(d)(3)
18 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 77t(d) & 78u(d)(3). Payment of
19 Disgorgement and Civil Penalties would be made to the SEC.

20 SEC ADMINISTRATIVE CASE

21 12. The second SEC proceeding was an administrative proceeding captioned *In the*
22 *Matter of Michael J. Byrd, CPA*, Securities and Exchange Commission Release No. 61516 /
23 Accounting and Auditing Enforcement Release No. 3113 / Administrative Proceeding File No. 3-
24 13781. This matter was resolved on or about February 12, 2010, by the issuance of an order

25 ¹ An option is at-the-money if the strike price is the same as the spot price of the underlying
26 security on which the option is written. An at-the-money option has no intrinsic value, only time
27 value. An in-the-money option has positive intrinsic value as well as time value. A call option is
28 in-the-money when the strike price is below the spot price. A put option is in-the-money when the
strike price is above the spot price.

1 instituting administrative proceedings pursuant to Rule 102(e) of the SEC's Rules of Practice,
2 making findings, and imposing remedial sanctions against Respondent. The SEC's order
3 suspended Respondent from appearing or practicing before the SEC as an accountant. The Order
4 provides that Respondent may request that the Commission consider his reinstatement after three
5 years from the date of the Order, that is, after February 12, 2013.

6 13. The SEC made findings summarizing the allegations of the Civil Action referenced in
7 paragraphs 8-11, and imposed a suspension on Respondent based upon its authority to suspend
8 from appearing or practicing before it any accountant who has been permanently enjoined by any
9 court of competent jurisdiction, by reason of his misconduct in an action brought by the SEC,
10 from violating or aiding and abetting the violation of any provision of the Federal securities laws
11 or of the rules and regulations thereunder, pursuant to Rule 102(e)(3)(i) of the Commission's
12 Rules of Practice.

13 FIRST CAUSE FOR DISCIPLINE

14 (Discipline by Government Agency)

15 14. Respondent is subject to disciplinary action under section 5100(h) of the code in that
16 on or about February 12, 2010 a governmental body or agency suspended Respondent's right to
17 practice before that governmental body or agency. The circumstances are described in
18 paragraphs 12-13, above.

19 SECOND CAUSE FOR DISCIPLINE

20 (Discipline by SEC)

21 15. Respondent is subject to disciplinary action under section 5100(l) of the code in that
22 on or about February 12, 2010, in Securities and Exchange Commission Release No. 61516 /
23 Accounting and Auditing Enforcement Release No. 3113 / Administrative Proceeding File No. 3-
24 13781, the United States Securities and Exchange Commission suspended Respondent's right to
25 appear or practice before that body. The circumstances are described in paragraphs 12-13, above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (SEC CIVIL ACTION)

3 16. Respondent is subject to disciplinary action under section 5100(1) of the code in that
4 on or about on or about January 2, 2010, a final judgment was entered against Respondent
5 *Securities and Exchange Commission v. Michael J. Byrd*, Civil Action No. C-07-4223. The
6 judgment also ordered Respondent to pay a civil penalty of \$175,000 to the SEC. The
7 circumstances are more fully described in paragraphs 8-11, above

8 FOURTH CAUSE FOR DISCIPLINE

9 (Failure to Report Discipline)

10 17. Respondent is subject to disciplinary action under sections 5100(g) and 5063(a)(3) of
11 the code in that Respondent failed to report his suspension by the United States Securities and
12 Exchange Commission to the Board within 30 days of the suspension.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Failure to Report Civil Judgment)

15 18. Respondent is subject to disciplinary action under sections 5100(g) and 5063(c) of the
16 code in that Respondent failed to report the civil judgment described in Paragraphs 8-11, above,
17 to the Board within 30 days of the judgment.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the California Board of Accountancy issue a decision:

21 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
22 Accountant Certificate Number CPA 46019, issued to Michael J. Byrd;

23 2. Ordering Michael J. Byrd to pay the California Board of Accountancy the reasonable
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions
25 Code section 5107;

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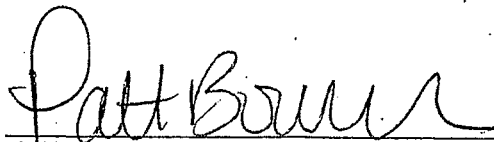
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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/11/2011



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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